

Department of Justice

§ 17.44

and any doubt shall be resolved in favor of the national security. Sections 2.6 and 3.3 of Executive Order 12968 provide only limited exceptions to these requirements.

(c) The Department of Justice does not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation in granting access to classified information. However, the Department may investigate and consider any matter that relates to the determination of whether access is clearly consistent with the interests of national security. No negative inferences concerning the standards for access may be raised solely on the basis of the sexual orientation of the employee or mental health counseling.

(d) An employee granted access to classified information may be investigated at any time to ascertain whether he or she continues to meet the requirements for access.

(e) An employee granted access to classified information shall provide to the Department written consent permitting access by an authorized investigative agency, for such time as access to classified information is maintained and for a period of three years thereafter, to:

(1) Financial records maintained by a financial institution as defined in 31 U.S.C. 5312(a) or by a holding company as defined in 12 U.S.C. 3401;

(2) Consumer reports under the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*); and

(3) Records maintained by commercial entities within the United States pertaining to any travel by the employee outside the United States.

(f) Information may be requested pursuant to the employee consent obtained under paragraph (e) of this section only where:

(1) There are reasonable grounds to believe, based on credible information, that the employee or former employee is, or may be, disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power;

(2) Information the Department deems credible indicates the employee or former employee has incurred excessive indebtedness or has acquired a

level of affluence that cannot be explained by other information; or

(3) Circumstances indicate that the employee or former employee had the capability and opportunity to disclose classified information that is known to have been lost or compromised to a foreign power or an agent of a foreign power.

§ 17.42 Positions requiring financial disclosure.

(a) The Assistant Attorney General for Administration, in consultation with the Assistant Attorney General for National Security, shall designate each employee, by position or category where possible, who has a regular need for access to any of the categories of classified information described in section 1.3(a) of Executive Order 12968.

(b) An employee may not hold a position designated as requiring a regular need for access to categories of classified information described in section 1.3(a) of Executive Order 12968 unless, as a condition of access to such information, the employee files with the Department Security Officer:

(1) A financial disclosure form developed pursuant to section 1.3(c) of Executive Order 12968 as part of all background investigations or reinvestigations;

(2) The same financial disclosure form, if selected by the Department Security Officer on a random basis; and

(3) Relevant information concerning foreign travel, as determined by the Department Security Officer.

[Order No. 2091-97, 62 FR 36984, July 10, 1997, as amended by Order No. 2865-2007, 72 FR 10069, Mar. 7, 2007]

§ 17.43 Reinvestigation requirements.

Employees who are eligible for access to classified information shall be subject to periodic reinvestigations and may also be reinvestigated if, at any time, there is reason to believe that they may no longer meet the standards for access.

§ 17.44 Access eligibility.

(a) Determinations of eligibility for access to classified information are separate from suitability determinations with respect to the hiring or retention of persons for employment by